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SENSITIVE
SIPDIS

DEPT PASS TO USTR (AGAMA & GARDE) AND USPTO THICKEY
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DOC FOR 3317/ITA/OA/KBURRESS, 3130/USFC/OIO/ANESA/DHARRIS AND CLDP
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SUBJECT: NIGERIA: GON IPR OFFICIALS ENTHUSIASTIC FOLLOWING USG
WORKSHOP

REF: LAGOS 242

11. (U) Summary. The United States Patents and Trademarks Office (USPTO) and the U.S Department of Commerce Commercial Law Development Program (CLDP) with sponsorship from the United States Agency for International Development (USAID) held two concurrent workshops from June 24 to 26 for GON intellectual property rights (IPR) officials covering intellectual property (IP) protection, enforcement, and adjudication, including trademark enforcement. The workshops were USG deliverables from the December 2007 Trade and Investment Framework Agreement Council meeting. High-level participation by the Minister of Commerce and Industry Charles Ugwu and the Ambassador demonstrated renewed GON commitment to addressing Nigeria's poor IP record, along with U.S. support. Also present at the workshops were attorneys from the Intellectual Property Law Association of Nigeria (IPLAN), judges from Nigeria and Ghana, and representatives from the Nigerian recording and film industry. The participants were so energized by the workshops that they agreed to collectively draft an impromptu communiqué recommending private sector and GON IP enforcement agencies deepen collaboration, increase IP public awareness, improve inter-agency partnerships, amend and strengthen IP laws, and lastly, combine Nigeria's disparate IP agencies into one agency. At the same time, comprehensive IP legislation remains a work in progress, and there is a long way to go to achieve better enforcement results. End Summary.

12. (U) Two concurrent three day workshops focusing on "Law, Policy and Enforcement of Intellectual Property and Trademark Examination" were held in Abuja from June 24 - 26. The workshops were organized by the U.S Department of Commerce, Commercial Law Development Program (CLDP) Office of the General Counsel, and the United States Patent and Trademark Office (USPTO) with sponsorship from USAID, and in collaboration with the Nigerian Federal Ministry of Commerce and Industry (MCI). The workshops were USG capacity building deliverables from the TIFA Council Meeting held in Abuja in December 12007.

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Opening Ceremony

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13. (U) Opening remarks were provided by the Ambassador, Minister of Commerce and Industry Charles Ugwu and a representative of the Director General of the National Agency for Food and Drug Administration and Control (NAFDAC). The Ambassador emphasized the importance of IP protection in attracting foreign direct investment leading to economic growth and development. She noted the dangers posed by counterfeit pharmaceuticals and automobile parts, and stressed the importance of IP protection in supporting public health and safety. The Ambassador underscored the need for capacity

building within IP agencies throughout the West-African sub-region.

14. (U) Minister Ugwuha praised U.S efforts assisting Nigeria to build IP enforcement capacity and commended other ongoing collaboration between the U.S. and Nigeria. Minister Ugwuha reported that the GON would continue implementing its economic reform program in line with the 7-Point Agenda of President Yar'Adua. Part of this reform is a plan to ensure that goods are cleared at the ports within 48 hours. To achieve the 48-hour target, the GON plans to withdraw all agencies apart from the Nigerian Customs Service (NCS) from the ports to streamline processing. Whenever the need arises, NCS could call on the other agencies to provide technical or professional advice, and in the longer term the GON plans to improve NCS capacity to handle all requests at the ports such as is done in developed countries. Minister Ugwuha asked participants at the workshop to provide inputs to the proposed Customs policy and advise if the time is appropriate to implement the proposed reforms. On the proposed creation of a one-stop GON IP agency that would be responsible for IP protection and enforcement, Ugwuha commented that the ongoing bickering among various GON agencies detracts from the common goal to protect IP and he hopes that Nigeria would follow best practices of other World Trade Organization (WTO) members by creating one agency.

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Excellent Attendance

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15. (U) More than 140 participants drawn from various GON agencies, IPLAN, the private sector, and the Ghanaian judiciary were represented at the event. The GON agencies that participated in the program included the Nigerian Copyright Commission (NCC), the

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Nigerian Customs Service (NCS), the Economic and Financial Crimes Commission (EFCC), Standards Organization of Nigeria (SON), National Agency for Food and Drug Administration and Control (NAFDAC), National Office for Technology Acquisition and Promotion (NOTAP), National Drug Law Enforcement Agency (NDLEA), and the Trademarks, Patents and Designs Registry under the Ministry of Commerce and Industry (MCI).

16. (U) Other participants included judges from the Nigerian and Ghanaian judiciary, attorneys from IPLAN, and representatives from the Nigerian film and recording industry. Subject matter experts at the workshop came from the USPTO; U.S. Copyright Office; CLDP; World Intellectual Property Organization (WIPO); an attorney from the law firm of Spoor and Fisher, based in Pretoria, South Africa; and the British American Tobacco company.

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Final Communique Recommendations

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17. (U) The participants were so energized by the workshops that they agreed to collectively draft an impromptu communique making the following recommendations:

- Increased inter-agency cooperation among GON IP agencies;
- Increased cooperation between the U.S. and Nigeria in IP capacity building;
- Amendment of current IP legislation to accommodate new developments in IP and better protect IP;
- Closer cooperation between IP right holders and GON IP agencies to increase public awareness;
- More robust funding for GON IP agencies;
- Incorporation of the various IP agencies into a single agency;
- The NCS should develop a framework on the enforcement of IP;
- The NCS should improve border enforcement to combat smuggling of pirated and counterfeit goods; and
- The private sector should develop a strategy to support GON efforts in combating counterfeiting and piracy.

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Domestic Legal Framework Update

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18. (U) Nigeria is a signatory to the Bern, Paris, Rome, and WIPO Conventions. Bankole Sodipo of IPLAN and other participants

highlighted the inadequacies of the present IPR legal regime. They lamented that laws on patent and trademarks legislation are outdated, were enacted in the 1960s, are mostly an adoption of British legal statutes that existed at the time, and that these laws cannot accommodate current developments in IP such as the use of the internet. It was also disclosed that a franchising law does not exist; rather, such transactions are treated under contract law. A hindrance to legal action is that in civil suits the Nigerian court system does not award legal fees to the party that wins, thereby discouraging stakeholders without deep pockets. Of the agencies represented only NCC and NAFDAC have the enabling legislation to prosecute pirates.

¶9. (U) A Nigerian Industrial Property Commission (NIPCOM) bill is currently at the National Assembly. The NIPCOM bill contains provisions for comprehensive registration of Patents and Designs, Plant and Animal Varieties, and Animal Breeders Rights. The bill proposes creating an Industrial Property Commission that would be responsible for all IP issues except copyrights. The NIPCOM bill is a private-member bill drafted by IPLAN and sponsored by Senator Wada of the National Assembly. (Note: A USG inter-agency team met with Senator Wada at the time of the December 2007 TIFA Council and later sent to the Senator USG comments on the draft bill. End Note)

¶10. (SBU) Bickering among various GON IP agencies led to IPLAN taking the initiative to push the NIPCOM legislation. There is an ongoing supremacy tussle between the NCC which is supervised by the Ministry of Justice (MOJ) and the Ministry of Commerce and Industry. While stakeholders would like to have a one-stop agency on IP, the NCC insists it should be the lead agency on IP. During the last administration it maneuvered to get an executive order for the creation of a Nigerian Intellectual Property Commission; however, there is no enabling legislation. The MCI argues that under WTO best practices Trade Ministries should be responsible for IP issues and Nigeria should not be different. President Yar'Adua has instructed both the Ministers of Justice and Commerce and Industry to harmonize their views and come up with a way forward. (Comment: It is likely that if the MOJ and MCI could reach an agreement and come up with an executive bill on a one-stop GON IP agency, the present NIPCOM bill would be withdrawn. End Comment)

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Enforcement - Nigerian Customs Service

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¶11. (U) A large contingent from NCS attended and was very much engaged during all three days. In its presentation the NCS acknowledged the dangers of counterfeiting and piracy. It admitted the problems it faces in ensuring that only legitimate products come into Nigeria through the borders. NCS enumerated its action plan for IP enforcement to include making an official request to the GON Tariff Technical Committee to amend a portion of the proposed tariff book to state that "all counterfeit materials or articles including base or counterfeit coin of any country are prohibited". According to NCS, this will give it wider powers to combat counterfeiting and piracy because presently only counterfeit coins are recognized as counterfeit items in the existing Customs and Excise Management Act (CEMA).

¶12. (U) The NCS also plans to reach out to right holders to highlight distinguishing signs and marks for identifying their original products to enable NCS to combat fakes and counterfeits effectively. NCS will create a recordation system that will assist in creating a database of genuine products. An IP unit will be instituted within the NCS and there are plans to improve the level of awareness on IP within the NCS. NCS representatives were outspoken in supporting inter-agency cooperation and close ties to the private sector.

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EFFC Involvement in IP Enforcement

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¶13. (U) A speaker from the EFCC provided insights into raids that had been conducted on several illegal optical disc (OD) replicating plants in Lagos. The EFCC rep estimated that 80% of international

music CDs and 40% of domestic music CDs in Nigeria were pirated. He said the raided plants were run by Asians and the workers arrested in the premises were also from Asia. The EFCC rep lamented that at one of the raided plants, local policemen had been hired to guard it and had tried to prevent the EFCC from conducting the raid; however, the raids were successful. In follow-up to his recent return from a USG sponsored program at the UPPTO Global Intellectual Property Academy in Virginia, the EFCC rep expressed encouragement because a Zambian classmate had told him about a Zambian IP Task Force. He urged his colleagues in the GON to support creation of their own inter-agency IP Task Force that would also include the Nigerian Police Force.

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NCC's Mixed Reviews on Enforcement

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¶14. (U) The NCC is currently implementing the Optical Disc Regulation, and it reported that more OD plants have been registered. Between 2005 and 2007 the NCC conducted 115 raids, arrested 373 people, and prosecuted 15 cases, which resulted in four convictions. The NCC rep highlighted the challenges faced by the NCC in its enforcement efforts - long and tortuous judicial process, and inadequate budget funding. It is estimated that it costs between 5 million naira (\$42,700) to 10 million naira (\$85,400) to conduct a raid, which is major limitation for the financially strapped agency.

¶15. (U) Workshop participants chided the NCC for the paltry number of convictions it has architected, and questioned the NCC's investigative competence. In his response, the NCC rep reiterated the challenges faced by the NCC and advised that the successes he highlighted were achieved only between 2005 and 2007. He said participants should view the successes from the context of the NCC scorecard prior to 2005, which he adjudged not commendable. On investigative competence, there is room for improvement and NCC would welcome more training for enforcement officers. To speed prosecutions, the NCC suggests the establishment of commercial courts to adjudicate copyright cases.

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NAFDAC Seeks USG Support on Counterfeiting

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¶16. (U) NAFDAC underscored problems with counterfeit medicines imported from India and Asia into the West African sub-region. According to NAFDAC, some countries regulate domestic production of medicines but do not regulate medicine exports to other countries, including India and China and that this double-standard should be addressed at the World Health Assembly (WHA) and other international

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forums. NAFDAC advocated for more stringent regulations on counterfeiting worldwide and requested USG support at the next WHA.

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Private Sector Stakeholders Frustrated

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¶17. (U) Bankole Sodipo of IPLAN commented that IP enforcement in Nigeria has not achieved much in prosecuting IP infringers, and that existing laws need to be amended to reflect current realities and developments. He listed two major challenges to IP enforcement:
-- Rights holders' poor understanding of the laws, which includes the false belief that it is the primary responsibility of the government to enforce IPR;
-- The cost of enforcement is high, while IP agencies are not adequately funded.
Sodipo also stressed the need for continuous training of enforcers and the judiciary. He agreed with previous speakers that inter-agency cooperation among the various IP agencies and cooperation with rights holders is very important. In conclusion he suggested producing a documentary on the ills of piracy with well-known actors and airing it on television as a first step towards public enlightenment.

¶18. (U) A rep from the Nigerian recording industry complained that IP enforcement was poor. He noted that the Alaba market in Lagos has for sale pirated CDs with 100 tracks for as little as 35 naira

(29 cents) and that his industry is being decimated. The domestic recording industry is taking action and has gone to the management of the Alaba market to stop the sales of pirated CDs. His association is trying to put pressure on other marketers, such as sellers of furniture, appliances, electronic goods etc to close down or remove the pirated CDs. He is so far encouraged by the discussions with the market and plans to sign an MOU to establish an anti-piracy task force in it. He lamented the growth in illegal optical disk replicating plants from 5 in 2003 to 18 in 2008. He estimated that OD plants are producing more than local demand and are now exporting pirated ODs. He hinted that high-level political ties to the pirates have led to the growth.

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Comment

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¶19. (U) The level of enthusiasm among GON IP agencies is high, and the USG has contributed significantly to achieving this. The proposed inter-agency working group/task force will go a long way in making more progress in IP enforcement. However, it is important for the GON to increase public awareness on IPR and for the private sector to collaborate with the GON to fight piracy and counterfeiting. Following the workshop, members of IPLAN and other stakeholders were interested in partnering with the Mission to develop an IP public awareness campaign using USG funding. The Mission will work with IPLAN and other stakeholders to put forward a plan using State EEB/TPP/IPE and R/PPR funding for IPR outreach.
End Comment.